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## JOHN RANDOLPH TUCKER.

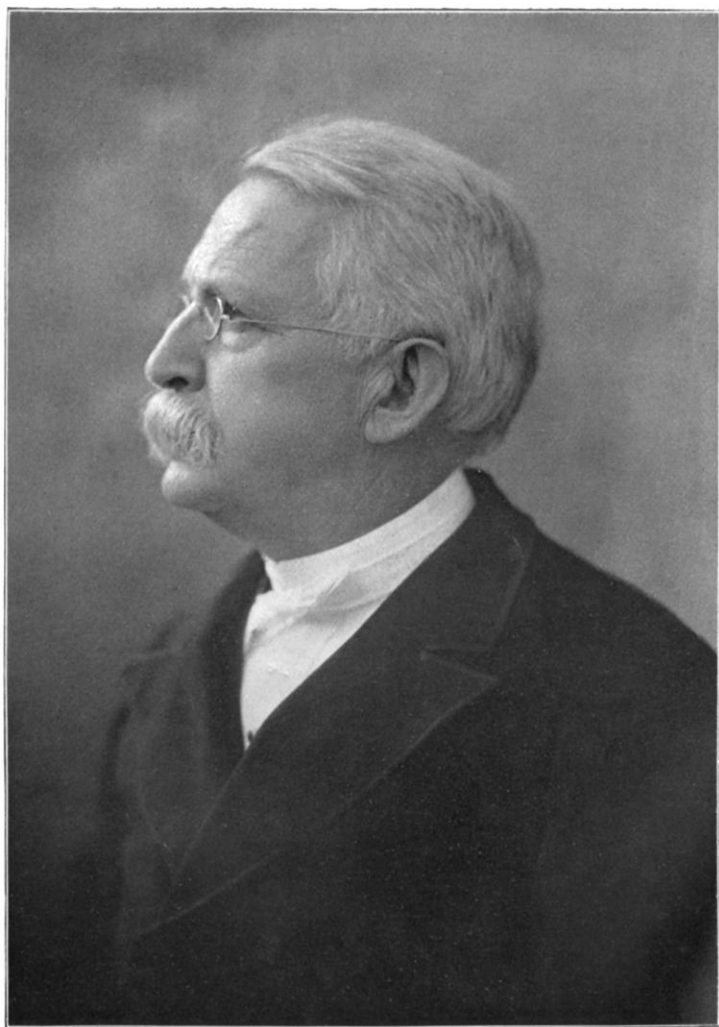
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The principle of heredity, upon which we are often disposed to rely with too much confidence, does not seem to have exerted itself in directing taste or perpetuating talent among the brothers of the family of which Mr. Tucker was a member. They were all more or less talented men, displaying considerable versatility; but of six brothers who reached mature manhood, John Randolph Tucker was the only one who practiced the profession of the law or seems to have had conspicuous talent or inclination in that direction.

And yet, by inheritance, no men had better right to be lawyers, and all of them should have been equally gifted, if heredity could scientifically be called a *law*.

Mr. Tucker's mother's father, Moses Hunter, was a distinguished lawyer and was himself of a race of lawyers. His paternal grandfather made his mark as a soldier and was a prolific and graceful miscellaneous writer. His father was also on occasion a soldier, and served two terms in Congress. But while, in their day, men of note in these capacities, so much did the lawyer-faculty in them exceed their other sources of reputation that we only know of them now as great lawyers, judges, and writers and teachers of the law.

But of the years of the lives of the three, from 1752 to 1897—from the birth of the first to the death of the last—during all the mature lives of the father, son and grandson, extending over more than one hundred years, these men were conspicuous in their State and nation as eminent lawyers. St. George Tucker was adjudge of the General Court in 1788, and died in 1827. H. St. George Tucker became Judge of the Superior Court of Chancery in 1824 and died in 1848, and both were meanwhile Judges of the Court of Appeals of Virginia. John Randolph Tucker, although he had only been four years at the bar when his father died, had already made his mark, and in 1857 was made Attorney-General of Virginia.



JOHN RANDOLPH TUCKER.

The theory of inheritance has *lateral support* in this case in the fact that the grandmother of Mr. Tucker was the mother of John Randolph of Roanoke: and in sequence it finds confirmation in the career of H. St. George Tucker, who succeeded his father in Congress after an interval of only one term; serving there eight years and making an enviable reputation for character and ability, while he has still maintained the high standing at the bar attained by him even before he entered public life. Heredity is a fickle and sometimes a frivolous factor. It often perpetuates with painful exactness some trifling gesture or insignificant habit, and yet refuses to hand down power of intellect or traits of divine loveliness. But if, as sometimes happens, its forces are concentrated in some channel of transmission, we see in the son, with added splendor, the fine faculties of the sire. For John Randolph Tucker, heredity seems to have gathered in his ancestral garden with a lavish hand and to have poured its fruits and flowers copiously upon him. To the high character, courage and legal talent, which he may be said to have come by from inheritance, were added great qualities of his own; an infinite sense of humor, with singular power of making others enjoy it; a clearness, felicity and concentration of expression seldom equalled; a capacity for labour which was but the manifestation of the intellectual forces behind it, and a gentleness and loveliness of disposition which disarmed malignity and comforted jealousy out of its pains. These made up the man now so lately dead that it is hard for one who knew him well to even *coldly praise him*.

It is no disparagement to his distinguished ancestors to say that John Randolph Tucker was far away the greatest man of his race, and I believe that this will be conceded when the time shall come for writing his critical biography.

For his father Mr. Tucker had an intense admiration and affection. Forty-eight years after his death, in an article contributed to the March, 1896, number of this magazine, he says with reference to him that the writer "feels conscious that his pen may be guided by the impulse of strong affection which binds him to the memory of the best and most devoted of fathers."

Several years ago I spent the larger part of a rainy day with Mr. Tucker at his house in Lexington. His conversation most of the time was about his father, and he related to me nearly all of the details which are given in the magazine article to which I have referred. He spoke of his father's first paralytic stroke, in 1841, describing with pathetic minuteness his subsequent failing health and powers, and the

eager watch which he tried to keep upon himself lest, unconsciously, feebleness should so slowly creep upon him that he might linger in the tenure of the responsible position occupied by him after he had become inadequate to the performance of its duties.

Mr. Tucker indicated that he feared that possibly the same thing might happen in his case; but happily it was a needless apprehension, for, although he had by three years passed the allotted three score years and ten, yet "age had not withered him nor custom staled his infinite variety."

I dwell upon this feature of filial devotion because it discloses some of the characteristics of Mr. Tucker. The writer recalls how often, in his walks with him about Winchester, his father was the theme of conversation; how he would point out the places at which he had lived and the parts of the town he was given to frequenting.

Once in the parlor of a gentleman of that town, at an entertainment in its full height of merriment, and the centre of which, of course, was Mr. Tucker, he turned suddenly to the writer, and, laying his hands upon my shoulder, exclaimed with genuine emotion: "On this very spot my father died." He then marked out the location of the bed and of the different pieces of furniture in the room, and followed it with a graphic picture of the death-bed scene, then nearly forty years ago. But so self-contained was he, and so close in him ran the lines of the pathetic and emotional with the almost boyish buoyancy which was so large a part of his nature, that in a few moments he was leading fast the fun which seemed to be the inevitable companion of his presence.

Those walks, too, have taken us to the cemetery and to his father's tomb, where he has read aloud to me, with all the force that his own presentation added to it, the singularly beautiful epitaph of which his uncle, Judge Beverly Tucker, was the author. I cannot refrain from quoting it:

IN MEMORY OF  
HENRY ST. GEORGE TUCKER,  
Late President of the Court of Appeals.

\* \* \* \*

Learned without pedantry; grave without austerity; cheerful without frivolity; gentle without weakness; meek but unbending; rigid in morals, yet indulgent to all faults but his own.

The elements of goodness were in him combined and harmonized in a certain majestic plainness of sense and honor, which offended no man's self-love, and commanded the respect, confidence and affection of all.

A faithful husband; a kind and prudent father; a gentle master; a steadfast friend; an able and diligent public officer.

He lived without reproach  
And died without an enemy.

Now but a few feet from the father's is the new-made grave of the son, upon which the grass has not yet grown, and on which still lie the unwithered garlands laid there as affectionate tributes from so many sources. Bearing him who has so lately ceased to be, in such vivid recollection, and remembering the manner of man that he was, I could not help feeling in the solemn silence of sweet old Mount Hebron that, classic and beautiful as is the inscription on his father's tomb, the stone which shall cover his had better bear his simple name, "John Randolph Tucker," with perhaps this added, for those of coming generations from whom knowledge of his inner life will be obscured by his great fame as a lawyer and statesman, "He did justly, loved mercy and walked humbly with his God."

Who of those who knew "Ran Tucker" can believe that this is all there is of life?

But disposed as those of us who were within the nearer circle of his acquaintance and affection are at this time to dwell solely upon the personal characteristics of Mr. Tucker; upon his intellectual, social and moral qualities; yet large as that circle is, remembering that what is written may be read outside of it, it is proper not to omit some summary, in the way of dates and events, if only thereby we may know the chronology, so to speak, of his life.

I have sufficiently referred to his ancestry. "Ran Tucker," as nearly everybody called him from his childhood, was born at Winchester on the day before Christmas, 1823.

In that town he lived, attending for a time an infant school, until in 1831, upon the election of his father to be President of the Virginia Court of Appeals, he moved with his family to Richmond. The family lived in the house at present occupied by Rev. Dr. Hoge, at the corner of Fifth and Main streets, and Mr. Tucker went to school at the Academy on the corner of Tenth and Marshall streets.

In 1838, when he was only fifteen years old, he entered the University of Virginia as an academical student, and when sixteen years of age graduated in mathematics. In 1841 his father resigned his seat on the Court of Appeals and accepted the professorship of law at the University of Virginia. The family residence was then at the University. In 1844, when not yet twenty-one years of age, he graduated in law and took up his residence and commenced the practice of his profession in the city of Richmond.

Meanwhile (in 1845) Judge Tucker, because of failing health, had resigned his professorship and returned to Winchester. Because of

the condition of his father's health Mr. Tucker left Richmond and went to Winchester to live, simply that he might be with his father in his last years.

At Winchester he formed a partnership in the practice of the law with the late Robert Y. Conrad and entered upon a career of great professional success. On October 5, 1848, he was married to Laura Holmes Powell, the daughter of Col. Humphrey Powell, of Loudoun county, Va.

In 1852 and again in 1856 he was an Elector on the Democratic ticket. In 1857 he was chosen Attorney General of Virginia, to fill the unexpired term of Hon. Willis P. Bocock, who had resigned. Thereupon he removed from Winchester to Richmond and resided near the corner of Grace and Adams streets, having his office in the basement of the State Court House on the Capitol square. In the Spring of 1859 Mr. Tucker was elected by the people Attorney General upon the Democratic ticket, headed by John Letcher for Governor. He was re-elected to the same office in 1863 and served until civil government in Virginia was superseded by the Federal forces upon the surrender of Lee. Mr. Tucker's terms of office, therefore, were coincident with a part of that of Governor Wise, and with the full times of service of Governors Letcher and Smith.

After the surrender of General Lee Mr. Tucker moved to Middleburg, in Loudoun county, Va., and forming there a partnership with Mr. Burr P. Noland, he practiced law in Loudoun and the adjoining counties

In 1869 Mr. Tucker accepted from President John Garrett a position as one of the counsel for the Baltimore & Ohio Railroad Company and moved to Baltimore to live. But upon being elected in 1870 to the professorship of Law in Washington & Lee University he resigned his connection with the railroad company and moved to Lexington, where he resided until his death on February 13, 1897.

In 1874, although not a candidate, he was nominated for Congress on the Democratic ticket from the Lynchburg District, and was elected that fall. Five times subsequently he was unanimously renominated for Congress and elected each time. In 1886 he announced that he would not accept a renomination; and in 1887, after twelve years of continuous service in Congress, he retired from political life.

After leaving Congress Mr. Tucker practiced law in Washington city, but in 1889, at the request of the Board of Trustees of Washington & Lee University, he resumed his full duties as professor of

equity, commercial law, and international and constitutional law ; his connection with the college never having been entirely sundered in all the years that he was in Congress ; nor had he ever given up his residence in Lexington.

In 1891 Mr. Tucker was elected the fourth President of the Virginia State Bar Association, and in 1893 he was elected President of the American Bar Association. The degree of LL.D. was conferred upon him by William & Mary College, by Yale, Harvard and Union College of New York.

This is the full list of his elective honors, but the catalogue is a short one compared with his triumphs at the bar and on the hustings: and small indeed, measured by those which friends, acquaintances and even adversaries have showered upon him.

Dry and uninteresting as this mere chronological summary may seem to the average reader, it recalls to those who were near to him the events of a public nature, his connection with which gave to Mr. Tucker his title to greatness as a statesman and a lawyer; and more than that, the mention of these dates crowds upon the memory incidents and scenes which make it easy to understand why, apart from those powers which made his public reputation, he was so much beloved and sought after.

The residence at Middleburg reminds me of horseback rides through the mud and ice of Fauquier roads which were robbed of much of their fatigue by the delights of his companionship. The Warrenton court recalls not only efforts at the bar in matters of minor pecuniary importance, such as might have been handed down as worthy to be recorded in the books alongside of the finest displays of legal oratory; but who that ever enjoyed it can forget the hospitality of Warrenton when the court had adjourned? Around many a festive board were gathered men who had made their mark and attained high rank in the war then just ended, and who since have risen to the highest grade in civil life, and received the fullest honors that it has been in the power of their fellow-citizens to bestow. But I venture to say that all of those who yet live will agree, that delightful as was the society of those who were hosts and guests, yet the central figure on each occasion was "Ran Tucker." Who can ever forget him as a raconteur, or fail to remember the never palling pleasure with which we listened to the experience of Major Rudd with the falling stars, or in all of its furious fun learned a lesson in logic and theology from the "smelling bottle" story. And through many a year thereafter, in various scenes and at



many places, and under every variety of circumstances, the pleasure of his society never lessened, and his wit never lost its zest.

But, witty and delightful as Mr. Tucker was, unequaled in facial play, handsome in person, cordial and affectionate in manner, gentle and amiable in disposition, and often eloquent beyond the powers of most of his contemporaries, Mr. Tucker was, above all things, the lawyer and the logician. He never failed to relieve the otherwise weariness of discussion at the bar or on the hustings with some by-play, some light jest or bright allusion; but it was often said of him that these were rarely thrown away or badly chosen. They served with very many an equal purpose with the weightier portions of his speeches, for they carried conviction to minds which could not be penetrated with other implements. No man who ever heard him in the debates upon the public debt question, between 1869 and 1883, where lines of figures and statistics made up so much of the speeches of many debaters, can forget the ease and clearness with which he made those matters plain. Full as he was of anecdote, and delightful as was his use of them on social occasions, he rarely told a story on the stump; and yet I believe that no man delighted an average crowd more than Mr. Tucker.

The trend of his mind at the bar and in Congress was all the time to constitutional questions. This had been peculiarly his life-study, and because of his abundant information on and familiarity with such subjects, both in conversation and discussion, their treatment was given with such clearness and ease that the listener always wondered what had been the difficulties which he had himself encountered about them.

His political creed upon the main question of his day may perhaps best be expressed in what he says was the faith of his grandfather—"he was jealous of centralism, and a firm believer in the reserved powers of the States as essential to the liberty of the citizen."

As a comprehensive statement further of his political views, it may be said that he was wholly opposed to paternalism in government; to the theory of protection; and earnestly in favor of local self-rule and of a sound and stable currency. It is hardly worth while to add that he had no conviction which he was willing to exchange or modify for favor or political advantage, and that he esteemed failure to secure public applause as a great gain if to get it would have been to sacrifice principle or to conceal opinion.

Mr Tucker believed in the right of secession as a constitutional question. As early as 1851, in an address before the Society of Alumni of the University of Virginia, he ably vindicated the right, although

he was then very far from advocating its expediency. Many of us who fought in the war between the States on the side of the Confederacy, neither knew or cared much about the doctrinal question, and have only come to believe in it as historical and constitutional since the argument of arms has brought out an express declaration against it. Later, in one of the ablest addresses of his life—a paper read before the “Social Science Association,” at Saratoga Springs, on September 6, 1877, on the “Relations of the United States to each other as modified by the war and the constitutional amendments”—he vindicated his earliest faith, and yet, with logical consistency, declared in his peroration that—

“This great Union of free Commonwealths, if preserved in its integrity by patriotic fidelity to constitutional obligations, and by purity of administration, from centralism in the head and anarchy among its members, is destined to do more for the freedom and progress of the human race and for the cause of Christian civilization in the world, than any system of government ever devised by the wit of man. In this sense and with these deep convictions of the truths I have uttered, my heart’s desire and prayer to God is for the Constitutional Union of States. *Esto perpetua.*”

He did not believe in the possible growth of a written constitution, and he thought that the very liberal expansion by the courts, of its written words, to adjust them to consistency with some modern dogmas of party, was bad faith with the “FOUNDERS,” who pledged to the hesitating States, in 1787–8, that future generations would never give to the words of the Constitution the interpretation they feared; and had they lived the people of those States would have seen their fears well founded.

Against paternalism he offered the maxim that the least governed is always the best governed people. He believed emphatically in a government *by the people* as against a government over the people.

In 1854 he said, in an address to the Societies of William and Mary College:

“The Republican—the Virginian idea is this: Every man is a sovereign. Society is a league based upon compact, actual or supposed, between individuals. Government is their joint agent.”

Again, in 1877, in an address before the graduating class of the Law Department of the University of Maryland, he said:

“The germ of all liberty is in the freedom of the person and of his property, which is the equivalent into which he has converted his muscle, brain and moral force (and therefore as much and as personally his own as the original force was a part of himself) from all power except his own, or that of those having an identity of interest with him. And the germ of all the assurances of muniments

for this liberty, is in the retention of ample governmental authority in the hands of those whose liberty, lives, or property may be in peril from any power whatever."

Again, in a speech delivered in Congress on June 16, 1880, he thus concentrates, in one expression, the whole philosophy of free government:

"The epitome of the doctrine of free institutions I may thus express: 'Grant to government the *minimum of power* and to the citizen the *maximum of liberty* consistently with the order and safety of society.' Let each man be left to work out his own destiny without help or hindrance from government, and let the government no further intervene in the affairs of the citizens of the country than may be needed to protect the right of each in his own work from the intrusion and violence of all others. This is true freedom, and this would secure the happiness of a people of independent and self-reliant freemen."

These were principles, not sentences or sentiments, with him. They were parts of his being, to live and grow and die with him, and not raiment to be changed with the political seasons, or as the atmosphere of possible political success or failure waxed warmer or cooler.

To these cardinal rules, which made the ground-work of his creed, should be conspicuously added, what was as much a matter of the heart as it was of the understanding, his intense love for and pride in his native State.

In 1854, when he was thirty-one years old, he said:

"I may claim, in the opinion of some, too much for my State, but not more than impartial history must award to her, when I assert that the political men of Virginia were the guides of the States of the Union in the early days of their independence. The great Virginian idea was the American idea; and, covered up, as it may sometimes have been in a confusion of words, and concealed by the absence of the clearer light, which later investigation has more fully developed, it still stands forth prominently in our early annals, easy of determination, and the germ of all political truth."

In 1895, forty-one years afterwards, he had found no reason to change, and, in an address before the West Virginia Bar Association, he said:

"Gentlemen of the Bar of West Virginia, I have made large claims for Virginia as the first among American Commonwealths—first in time; first in laying the foundations of Anglo-American liberty; first in starting the ball of Revolution for Independence; first in the leadership of the Revolutionary army; first in declaring her own independence, and the draftsman of the General Declaration; founder of the first Bill of Rights and the first written constitution on the continent; first to propose the original Federal Constitution for the Union; first and foremost in pressing for a new Constitution for that Union; first in the formulation of a scheme for the Constitution and in devising the compromise of power on which it

rests; first in directing the centripetal and centrifugal forces of the Union; chief in furnishing a domain for new States; chief in the policy which made the present inter-oceanic Union possible; mother of the greatest statesmen and military men of our country, and peers of any in the history of mankind. Have I not made her claim good?"

One who was constantly near him during his last sickness tells me that "his love for Virginia was one of the commonest expressions during his illness, which often mounted to the highest type of eloquence."

Before he was chosen to be Attorney-General, in 1857, Mr. Tucker had, although only little more than thirty years of age, attained distinction at the bar. In 1856 he had been selected by Governor Wise, under authority of an Act of the legislature, to defend James Parsons Jr., who had been arrested and was held for trial in Blair county, Pennsylvania, under the charge of kidnapping, which meant of endeavoring to secure the return of a fugitive slave. It was characteristic of Mr. Tucker, who ever paid but little attention to the *commercial* side of the practice of his profession, that in answer to the enquiry as to what the State should pay him for his valuable and arduous services, that he replied, "The State has a claim to my services when she calls for them—a claim which I acknowledge. Their value to her I shall not determine, because I cannot weigh my sense of duty in the scales of Mammon."

Neither was it because of a full purse that such lofty disregard of the pecuniary part of the transaction could be entertained; nor will any one who ever knew Mr. Tucker think that he was posing for effect. This no man ever knew him to do, and after a life of seventy-three years, with large gains in his business and many opportunities for more, he died a comparatively poor man.

In 1855, in the campaign of Wise and Flournoy when the "Know-Nothing" party had taken the place of and in many instances absorbed the membership of the Old Line Whig party, Mr. Tucker took an active part, stumping the State with and for Wise and making great reputation as an orator. If space sufficed, the reminiscences of those who heard him in that campaign and who remember most vividly his speeches and their great effect, would be interesting reading and would serve to throw much light upon Mr. Tucker's first venture into politics upon a State field.

His selection to be Attorney-General was no doubt mainly the result of the great party services rendered by him in 1855, but he would not have been selected if his standing as a lawyer had not been well established.

He entered upon his duties in 1857, when the groundswell of the coming political storm was already felt in the land. Before he had finished the unexpired term for which he was first chosen, the John Brown raid took place. He was re-elected in 1859, when the whole country was in a state of dread and apprehension as to what was to be the result of the fierce slavery agitation, and while in office for that term the State Convention met, the ordinance of secession was discussed and passed, the State left the Union, remained a while an independent government, then passed in as a member of the new Confederacy and attempted to assert her claims to sovereignty by force of arms. In the midst of war he was again elected, and before his new term expired the war ended with the capture of the Capital city and the flight of the State government. Few officials can claim a more exciting or adventurous term of office, or one affording more experiences for which there were no precedents, or calling for the exercise of sounder judgment or more consummate knowledge of public affairs and of the history and elements of government.

And yet adequate in all respects as were Mr. Tucker's abilities to the distinguished performance of the trying duties of his office, his reputation gained while he was Attorney-General of Virginia is but a small part of his fame as a lawyer.

True it was sufficient to cause him to be retained with Charles O'Connor and others as counsel for Mr. Davis, at Mr. Davis' express request, but his real reputation—his national fame—came to him in later years.

This is not the place, nor is there space here, for anything like an exhaustive presentation of him as a great lawyer. I do not attempt it. I only essay to show how he stood and to what standing he was entitled by referring to but a few and those the more conspicuous of the cases which served rather to verify than to make his fame.

There was no more stalwart debt payer in the State of Virginia than Mr. Tucker. Yet when the legislature saw fit to enact laws obstructing the application of coupons upon the bonds of the State to the payment of taxes, whereby the coupons could be hindered from intervening between the taxpayer and the public treasury, and thus intercepting the entire revenue of the State, and the Federal Court interfered at the suit of the creditor, and in the case of *Cooper &c. v. Marye &c.* adjudged that the Attorney-General (Hon. Rufus A. Ayres) was guilty of contempt in obeying rather the express law of the State than the mandate of the Federal Judge, and confined him in prison, Mr. Tucker

was the one most naturally selected to appear in the case and assert before the Supreme Court the superior power of the State.

With Mr. Roscoe Conkling as his associate, Mr. Tucker applied for the writ of *habeas corpus* by which to nullify the order of the Circuit Court and to release the Attorney-General and his fellow-sufferers from jail. It will be remembered how successful this proceeding was and what an important step it was in bringing about a settlement of the debt question *declared* to be satisfactory to all concerned, for at that time the question had long passed far away from the consideration of its original merits into one of the preservation of State autonomy, resistance to legalized tyranny, and the protection of the liberty of the individual.

This was a case admirably suited to both Mr. Tucker's peculiar gifts, and to his enthusiastic State love. All will remember the unstinted applause he received from all the people of Virginia, and the deep admiration his argument excited in the court, and in those all over the land best fitted to form a critical judgment.

As little sympathy as Mr. Tucker had with the repudiation of public obligations in any shape, he had less with modern anarchism. And yet in the case of *Spies v. Illinois*, 123 U. S. 131, he appeared for the Chicago anarchists to insist before the Supreme Court on their behalf, that by the proceedings in the trials in which they were convicted, the sentence of the court, if carried out, would deprive them of life without due process of law, in contravention of the Fourteenth Amendment of the Constitution.

The petitioners did not succeed, but in this case, as in that before referred to of *In re Ayres* (123 U. S. 443), it is impossible to read Mr. Tucker's argument and not be deeply impressed with the comprehensiveness of his views, the thorough and analytical manner in which he had considered and investigated the subject, and with the absolute clearness of his statements.

Simply in evidence of the wide range which Mr. Tucker's practice at the bar took (in spite of his confining occupation with his law classes), and particularly of the regard in which he was held as a constitutional lawyer, I refer to the case of *In re Tyler*, 149 U. S. 164, which was better known as the South Carolina tax case.

With the immediate surroundings of this case Mr. Tucker could have had but little more sympathy than he had with the *original merits* of the debt case, or with the doings of the anarchists whom he had defended, and yet his argument in this case (in spite of the fact

that he was now in his seventieth year) was as strong and as vigorous upon the constitutional questions involved, as any that he had delivered in his prime.

But it is impossible here to further pursue this line of investigation. The few cases cited show plainly how Mr. Tucker stood away from home. No man ever stood higher than he in Virginia, as an expounder of the Constitution, at the bar, in the halls of legislation, or upon the hustings.

We have seen that in 1874 Mr. Tucker was elected a member of the House of Representatives, his term commencing in March, 1875. He did not need a long apprenticeship in Congress to enable him to take a leading part. For a long time he was a member of the Committee of Ways and Means, for some time being the chairman of that important committee. For two Congresses he was the chairman of the Committee on the Judiciary. In Congress, upon constitutional questions he was often spoken of as a "strict constructionist." When he first went into Congress, however, any constructionist at all would be regarded as a strict constructionist, for the action of the majority of the members indicated that they were rather in accord with the views of that member from New York city who was wont to ask, "What's the Constitution amongst friends?"

There can be no doubt that Mr. Tucker, in determining how he should vote, measured all proposed legislation by the standard of the Constitution. In one of his earliest speeches in Congress he said that his own guide should be "the absolute subordination of governmental power to the rigid, inflexible, and unbending rule of the Constitution;" and to this he adhered with religious fidelity during all of the twelve years he kept his seat.

Upon constitutional grounds he opposed the appropriation by Congress to the Centennial of 1877. Being taunted in debate with the charge that Virginia had made no appropriation to that exhibition, he replied that it was because of the inhibition of the State constitution, remarking that no constitution prior to that of 1869 had contained such a provision, and that "was rammed down our throats by the military agencies of Federal power, and we were forced to adopt it."

In a speech of great ability, delivered on January 23, 1877, Mr. Tucker sustained the constitutionality of the bill for counting the electoral vote, advocating its adoption, however, with great reluctance and insisting that it should not be treated as a precedent.

With more prophetic power than he knew he expressed his appre-

hensions of the result and his suspicion of the means, by quoting, with a slight change, an unpublished poem of his father's:

"Hence, if you have a son, I would advise,  
Lest his fair promise you perchance may spoil,  
If you would have him in the State to rise,  
Instead of Grotius let him study Hoyle.

\*                      \*                      \*                      \*

And if he should betray  
A turn for petty tricks, indulge the bent:  
A dextrous cut may rule some great event,  
And a stocked pack may make a President."

With David Dudley Field as his associate he appeared before the Electoral Commission and argued the Florida case, and the result must have seemed to him to have gone very far towards justifying the apprehension.

In 1879, taking advantage of the bill before the House making an appropriation for the support of the army, Mr. Tucker earnestly urged the restriction proposed for preventing the use of the military at the polls. As was usual with him, the discussion took a constitutional turn, and, with characteristic fidelity to the cardinal principles of his faith, he made this appeal:

"Let us cling to the Constitution as the *tabula in naufragio*; as our only hope under God, on the breakers and amid the storms which beset us; that Constitution which is a bundle of the institutional liberties of the Anglo-Saxon race, secured by new and republican forms of government."

The Chinese immigration bill of 1882 Mr. Tucker earnestly advocated as essential to the preservation of American and Christian civilization, and he showed that it was plainly within the power of Congress, under the clause of the Constitution which gives to it the right to regulate commerce.

The Mormon polygamy bill of the same year Mr. Tucker opposed as unconstitutional in some of its features, but he was himself mainly the author of the bill of 1887, which was free from those objections. He advocated this bill on the floor of the House, and contributed much to its passage.

The oleomargarine bills Mr. Tucker opposed as largely obtaining protection legislation under false pretenses, and because they seemed to trespass to a dangerous degree upon the reserved police powers of the States. The great difficulty experienced subsequently by the Supreme Court in reconciling bills of this character with the grants and reservations of the Constitution, and in drawing proper distinctions



between matters which are State and interstate subjects of commerce, clearly justifies Mr. Tucker's opposition. The object of the grant of power to Congress to regulate interstate commerce was simply to prevent conflicting regulations on that subject by the States themselves. It was not contemplated that Congress would ever *regulate*, except by passively retaining unexercised the power to do so. This whole line of legislation is but the growth of latter-day paternalism.

Perhaps the ablest speech delivered by Mr. Tucker in Congress was that on the tariff delivered by him in the House of Representatives on May 8, 1878. If the necessity for keeping this paper within bounds did not forbid it, the familiarity with it of all who give any attention to public affairs would excuse quotations from it. Suffice it to say that, being an exhaustive discussion of the subject before it had become a well-recognized party issue, the speech became the gospel of anti-protection.

Mr. Tucker gave but little attention to the mere bill then under consideration as a means of revenue, but discusses the whole question upon grounds of political economy and in the line of the whole philosophy of free government. With pointed antithesis he shows the difference under such a system between those who must be the "burden bearers" and those who are the "bounty takers."

He was a bold and powerful, and withal a very delightful, debater. Overflowing with information and entering the lists only after arduous and conscientious preparation for the encounter, he was rarely baffled by an adverse statement, or surprised by the ingenuity of a question.

Few men possessed readier wit or more unlimited resources of sarcasm; and I believe I never heard a speaker who equalled him in the *argumentum ad absurdum*. But he used these gifts for the *subject of debate* and not against the *person* of his adversary. To all men, in private conversation, at the bar, on the hustings, or in the legislative halls, he was the essence of a winning and gracious courtesy.

Once, having seemed to resent what he thought was a fling by Gen. Garfield (who however quickly disclaimed it) at Gen. Lee as having been lacking in good faith to his oath as an officer in the United States army, he excused his attitude by saying—

"My reason for referring to what he said was that I represent on the floor a little town where sleep the remains of one of the noblest Americans that ever trod its soil. He sleeps in death, and no dishonor can ever, expressly or by implication, be cast upon that honored grave that the representative of that district will not rise here and repel it."

It is not to be wondered that among his friends he numbered both those who differed from and those who agreed with him. Garfield, Kelly, Butterworth, McKinley, and Justice Harlan were his friends only next to men like Carlisle, Justice Field, Wilson, Gray, Mills, Turner of Georgia, and hosts of others. During President Arthur's administration there was no more honoured guest at the White House than Mr. Tucker.

As a teacher of the law I had but little opportunity of forming a personal judgment of Mr. Tucker, but it is not hard to understand how he attained to such a reputation as a Professor of Law. One of his law students, now himself an eminent member of the Virginia bar, writes of him:

"When in 1872-3 I was one of his law students, he was incomparably the most perfect instructor, in all respects, that I either as a boy or man have ever known. He was clear, concise, and entertaining as a lecturer, and yet as full and complete as it was practicable to be with students; his methods of instruction obtained the best results from the clever, as well as from the dull, student."

It is singularly unfortunate that the two great law schools of Virginia should have lost their great professors within little more than twelve months of each other.

Mr. Tucker was a religious man, by training from his earliest youth, by disposition and sentiment, and by a strong and rational conviction. Perhaps one of the best addresses of his life was that delivered before the Y. M. C. A. of Alexandria, Va., on February 14, 1856, in which he discusses the whole philosophy of Christian belief.

He was a Presbyterian and believed in John Calvin and the shorter Catechism. Moreover, he was very proud of the history of his great church, and admired its method of government and worship. But there was no element of bigotry about him. With earnest, unwavering convictions of his own, he still did not stand upon the essentiality of theological dogma. He did not insist that men must be damned for a difference, and his cosmopolitanism even let him believe that men might be sincerely religious whose convictions yielded affirmative assent to no fixed and formulated creed.

Being all of these things, why should it be asked what he was to his family and friends? As to the first it is a picture to have been seen, not to be described.

As to his friends—the senior by many years of a great number of them—he was apparently never older than his companions. Of great and distinguished reputation, he did not by word or manner indicate

that he regarded himself as their superior. Full of affairs of his own, he never seemed to forget what concerned them. Constant as was the demand upon his time and thoughts, his faculties were always at the service of those who needed help or advice from him. Devoted as he was to his family and they to him, they did not so absorb his affections but that he was always full of sympathy for those of his friends who suffered, and among the first to rejoice with them in prosperity.

In writing this it may be laid to my charge that, as he said of himself, "my pen may be guided by the impulse of strong affection," but, if so, who of those who knew him is not subject to the same disqualification?

R. T. BARTON.

Winchester, Va.

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#### JURISDICTION OF COUNTY OR CORPORATION COURT ON TRIAL FOR FELONY TO SENTENCE FOR MISDEMEANOR.

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In the March number (1897) of the VIRGINIA LAW REGISTER, C. A. G., whom I take to be the distinguished Professor of Common and Statute Law of Washington & Lee University and one of the Associate Editors of the REGISTER, invites the views of the readers of that journal as to whether the Act, approved March 5, 1896, (Acts 1895-6, p. 924, ch. 845) takes away the jurisdiction of the County and Corporation Courts to give judgment for a misdemeanor on a verdict of conviction where under our statute law the accused, charged with a felony, may be acquitted by the jury of the felony and convicted of a misdemeanor. In commenting on this Act in note to *Lacey v. Palmer*, 2 Va. Law Reg. 95, Judge Burks propounds the *quære*: How are these statutes affected by the Act referred to of March 5, 1896? The language of the Act is "The several Police Justices and Justices of the Peace, in addition to the jurisdiction exercised by them as conservators of the peace, shall have exclusive original jurisdiction of all misdemeanor cases occurring within their jurisdiction, in all of which cases the punishment may be the same as the County and Corporation Courts are authorized to impose," etc.

This question, of course, cannot arise under the many statutes to be found in the Code, and in the amendments thereof, making the punishment for certain offences confinement in the penitentiary, or in the dis-